

**BOIES SCHILLER FLEXNER LLP**  
SCOTT E. GANT (admitted *pro hac vice*)  
sgant@bsfllp.com  
1401 New York Avenue, NW  
Washington, DC 20005  
Telephone: (202) 895-7566  
Facsimile: (202) 237-6131

JAMES W. LEE (admitted *pro hac vice*)  
jwlee@bsfllp.com  
100 SE Second Street, Suite 2800  
Miami, FL 33131  
Telephone: (305) 539-8400  
Facsimile: (305) 539-1307

SARAH L. JONES (SBN 347368)  
sjones@bsfllp.com  
2029 Century Park East, Suite 1520  
Los Angeles, CA 90067  
Telephone: (213) 629-9040  
Facsimile: (213) 629-9022

*Attorneys for Defendant Dreamland Baby Co.*

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

IN RE DREAMLAND BABY CO.  
WEIGHTED SLEEP PRODUCTS  
LITIGATION,

This Document Relates To:

All Actions

Master File No.: 3:24-cv-02996-CRB

**DEFENDANT DREAMLAND BABY  
CO.'S OPPOSITION TO PLAINTIFFS'  
MOTION TO APPOINT INTERIM  
CLASS COUNSEL**

Action Filed: May 17, 2024

1     **I.     INTRODUCTION**

2             Federal Rule of Civil Procedure Rule 23(g)(3) provides “[t]he court *may* designate  
3 interim counsel to act on behalf of a putative class before determining whether to certify the  
4 action as a class action.” F.R.C.P. 23(g)(3) (emphasis added). Appointment of interim class  
5 counsel is permitted, but not required.

6             Plaintiffs’ Motion to Appoint Interim Class Counsel [ECF No. 29] (hereinafter  
7 “Motion” or “the Motion”) is unnecessary and premature. For the reasons set forth herein,  
8 Plaintiffs’ Motion should be denied without prejudice.

9     **II.    BACKGROUND**

10            From May to July 2024, Plaintiffs filed four complaints in this District, containing  
11 substantially similar allegations. *See Monsch v. Dreamland Baby Company*, No. 24-cv-02996  
12 (N.D. Cal. 2024); *Fehrenbach v. Dreamland Baby Company*, No. 24-cv-03406 (N.D. Cal.  
13 2024); *Miller v. Dreamland Baby Company*, No. 24-cv-03379 (N.D. Cal. 2024); *Muse v.*  
14 *Dreamland Baby Company*, No. 24-cv-03763 (N.D. Cal. 2024).

15            On June 24, 2024, Plaintiffs, along with Defendant Dreamland Baby Co.  
16 (“Dreamland”), filed a Stipulation to relate the *Monsch*, *Fehrenbach*, and *Miller* cases, with the  
17 Court approving that Stipulation on June 25, 2024. ECF No. 22. Plaintiff’s counsel in the *Muse*  
18 action then filed an administrative motion to relate the case, which the Court granted on July 1,  
19 2024. ECF No. 24.

20            On July 16, 2024, the Parties filed a Stipulation proposing that the four related cases be  
21 consolidated, and providing that the Plaintiffs would file a single, consolidated pleading. ECF  
22 No. 26. The Court entered an order consolidating the cases on July 17, 2024, and directing  
23 Plaintiffs to file a Consolidated Complaint within 21 days. ECF No. 27.

24            On July 26, 2024, Plaintiffs filed the Motion to Appoint Interim Class Counsel. ECF  
25 No. 29.

### 1 III. SUMMARY OF ARGUMENT

2 Plaintiffs' Motion is unnecessary. Plaintiffs inaccurately claim the appointment of  
3 interim counsel is warranted because there are "duplicative, overlapping, or competing suits."  
4 Mot. at 1. There is now *one* case, with *one* consolidated complaint forthcoming.

5 Plaintiffs' Motion is also premature. This case is barely underway. Plaintiffs have not  
6 yet filed their consolidated complaint. Defendant does not yet know who the plaintiffs will be,  
7 what causes of action will be asserted, what proposed class definition(s) will be, or whether the  
8 named plaintiffs will have standing. A decision about whether to appoint interim class counsel  
9 is far from ripe.

### 10 IV. ARGUMENT

#### 11 A. A Rule 23(g)(3) Order is Unnecessary.

12 Rule 23(g) provides "[t]he Court may designate interim counsel to act on behalf of a  
13 putative class before determining whether to certify the action as a class action." F.R.C.P.  
14 23(g)(3). Plaintiffs inaccurately contend that appointment of interim class counsel is  
15 appropriate because "there are a number of overlapping, duplicative, or competing suits." Mot.  
16 at 1; *see also id.* at 2.

17 Plaintiffs asked for, and received, permission to have the cases consolidated [*see* ECF  
18 No. 26] and to file a consolidated complaint [*see id.* at 3]. The Court granted the Plaintiffs'  
19 request. ECF No. 27, at ¶ 8 ("Plaintiffs will file the Complaint no later than 21 days following  
20 the entry of this stipulation consolidated the Related Cases.").

21 There are no longer any "overlapping, duplicative, or competing suits," and no need  
22 for a Rule 23(g)(3) order. *Cf. Kristin Haley v. Macy's Inc.*, Civ. No. 15- 06033-HSG, 2016  
23 WL 4676617, at \*3 (N.D. Cal. Sept. 7, 2016) (denying motion to appoint interim class counsel  
24 because the consolidated action "does not present the special circumstances that warrant  
25 appointment of interim counsel" and "all pending actions in this District pertaining to  
26 Defendants' [alleged conduct] have been consolidated, and thus there exists a single  
27 consolidated action to which Plaintiffs intend to file a consolidated complaint").  
28

1 Plaintiffs similarly claim that “[a]ppointing interim class counsel is critical in the early  
 2 stages of complex litigation to ensure that Plaintiffs have a coordinated approach . . .” Mot. at  
 3 3-4. But Plaintiffs again ignore that they have *voluntarily* consolidated their cases and will be  
 4 filing a single pleading. How the lawyers filing that pleading organize themselves is not a  
 5 matter for the Court—and certainly is not the concern of Rule 23(g)(3).

6 Plaintiffs’ Motion is really an attempt to have this Court bless the “private ordering”  
 7 agreed upon by Plaintiffs’ counsel. Mot. at 1 (“All Plaintiffs and their counsel support the  
 8 private ordering described herein, and respectfully request this Court to grant their Motion to  
 9 Appoint Interim Class Counsel.”). However, “private ordering” is not the purpose or function  
 10 of a Rule 23(g)(3) Order. Courts therefore regularly deny motions to appoint interim class  
 11 counsel when there is no rivalry amongst plaintiffs’ counsel which would require such an  
 12 appointment. *See In re OpenAI ChatGPT Litig.*, No. 23-cv-03223-AMO, 2024 WL 1834368, at  
 13 \*1 (N.D. Cal. Apr. 26, 2024) (denying motion to appoint interim class counsel because  
 14 “[p]laintiffs do not indicate that the appointment is required to resolve any rivalry between  
 15 involved firms, nor any uncertainty as to their respective roles,” finding that plaintiffs did not  
 16 provide a “compelling reason to appoint interim lead counsel”); *In re Seagate Tech LLC Litig.*,  
 17 No. 16-cv-00523-RMW, 2016 WL 3401989, at \*3 (N.D. Cal. June 21, 2016) (denying motion  
 18 to appoint interim class counsel because “[c]ounsel here have never alleged that they considered  
 19 competing with one another, and it appears to the court that counsel intended to cooperate with  
 20 one another from the start of the case, rendering appointment of interim class counsel  
 21 unnecessary”); *Wang v. OCZ Tech. Grp., Inc.*, No. 11-cv-01415-PSG, 2011 WL 13156817, at  
 22 \*2 (N.D. Cal. June 29, 2011) (“This court has a single action and a single legal team seeking to  
 23 be appointed interim lead counsel . . . . Appointing lead interim counsel at this time therefore  
 24 is unnecessary.”); *Italian Colors Rest. v. Am. Express Co.*, No. 03-cv-3719-SI, 2003 WL  
 25 22682482, at \*7 (N.D. Cal. Nov. 10, 2003) (denying plaintiff’s motion because “[n]o  
 26 competition exists among counsel that required refereeing by the Court, and no class has yet  
 27 been certified, or even proposed”); *Glen Ridge SurgiCenter, LLC v. Horizon Blue Cross & Blue*  
 28 *Shield of New Jersey*, No. 08-cv-6160-JLL, 2011 WL 5881924, at \*7 (D.N.J. Sept. 16, 2011)

(finding plaintiff's motion premature because there was "no danger of any rivalry or confusion that may make appointment of interim counsel appropriate").

Plaintiffs request to appoint interim class counsel is unnecessary.

### **B. A Rule 23(g)(3) Order is Premature.**

Plaintiffs Motion is also premature. Plaintiffs have yet to file a consolidated complaint and this case has not progressed past the initial pleading stage.

Courts are reluctant to appoint interim class counsel when a case is in the initial pleading stages and Plaintiff has not provided a compelling reason justifying the need for appointment of interim class counsel. *See e.g., Lyons v. CoxCom, Inc.*, No. 08-CV-02047-H (CAB), 2009 WL 6607949, at \*2 (S.D. Cal. July 6, 2009) (denying plaintiff's motion to appoint interim class counsel because the case "has not progressed past the pleading stage" and "there are no known overlapping, duplicative, or competing suits present"); *In re Google Dig. Advert. Antitrust Litig.*, No. 20-cv-3556-BLF, ECF 133 (N.D. Cal. 2021) (deferring ruling on the appointment of an interim co-lead counsel for a class until after "resolution of the pleadings in both cases").

Defendant submits that any Rule 23(g)(3) motion should await discovery from Plaintiffs. *See Glen Ridge SurgiCenter*, 2011 WL 5881924 at \*7 (finding plaintiff's motion premature because determination about interim class counsel "should not be made until [Defendant] has had an opportunity to take some discovery, including the deposition of [], the newly named class representative").

Plaintiffs' Motion identifies no prejudice that would arise from deferring any appointment of class counsel—interim or otherwise—until a later stage of the case.

### **V. CONCLUSION**

For the reasons discussed above, the Motion should be denied without prejudice. Defendant reserves all other arguments in opposition to any future motion under Rule 23.

1 Dated: August 5, 2024

Respectfully submitted,

2 BOIES SCHILLER FLEXNER LLP

3 By: /s/ Scott E. Gant

4 SCOTT E. GANT (admitted *pro hac vice*)  
sgant@bsflp.com  
5 1401 New York Avenue, NW  
6 Washington, DC 20005  
7 Telephone: (202) 895-7566  
Facsimile: (202) 237-6131

8 JAMES W. LEE (admitted *pro hac vice*)  
9 jwlee@bsflp.com  
10 100 SE Second Street, Suite 2800  
11 Miami, FL 33131  
Telephone: (305) 539-8400  
Facsimile: (305) 539-1307

12 SARAH JONES (SBN 347368)  
13 sjones@bsflp.com  
14 2029 Century Park East, Suite 1520  
15 Los Angeles, CA 90067  
Telephone: (213) 629-9040  
Facsimile: (213) 629-9022

16 *Attorneys for Defendant Dreamland Baby Co.*